

## SB 287 - Bill Summary

**Purpose:**

A bill to protect consumer access to the health care of their choice, balancing choice with consumer protection.

**The Bill:**

- Fixes a glitch that makes the practice of most alternative and complementary health care illegal (unlicensed professions are in technical violation of broadly worded practice acts).
- Codifies already existing case law – the courts have generally held that practitioners may not be sanctioned for practicing medicine without a license when certain conditions are met.
- Clarifies the circumstances under which a board may sanction an unlicensed practitioner.
- Provides a simple exemption to practicing without a license when **certain conditions are met**. The conditions include:
  - Disclosure – Practitioners must disclose in writing to the client information that includes their training and experience and clearly states that they are **not** licensed by the state of Montana.
  - Prohibited Acts – Practitioners may not perform certain acts that are so dangerous that only a licensed professional may perform them – even if the practitioner has training to perform those acts.
- Protects the Consumer:
  - Provides for sanction when practitioners perform prohibited acts or do not meet the other requirements of the exemption.
  - Informs the consumer as to the practitioner's background and clarifies the person is not licensed – something not currently required by law. These practitioners are already practicing – this gives the consumer the tools to make an informed decision.
  - Protects access to these services. In so doing, reduces costs of health care and prevents monopolization of services by licensed professions that drives up costs.
  - Consumers can still bring suit against anyone for malpractice or negligence.
  - Boards can still sanction practitioners who cause harm or are practicing negligently. Boards retain control over their own licensees.
- Addresses an issue without adding additional bureaucracy or more licensure.
  - These professions are low risk, and for the most part, have few numbers of practitioners. Licensure for these professions is not needed or feasible, but some level of protection to allow for practice without sanction to protect the public's right to seek out the health care of their choice is needed.
  - The current system for sanctioning a professional practicing without a license is still utilized. The bill clarifies the circumstances under which sanctions are implemented.

Amendments been added to the bill that strengthen the consumer protection aspect. They were added once the concerns were pointed out by the opponents. The Montana Health Freedom Coalition added these amendments as a show of good faith: we believe that it is possible to enact legislation that balances consumer protection with consumer access to low or no risk professions that do not require licensure.

# Consumer Health Freedom and Access Legislative FAQ Sheet

Prepared by MHFC Legislative Liaison Deborah Kimmet

## Why is Health Freedom needed? What's the problem?

1. **Alternative and complementary health care (ACHC) practitioners and other health care practitioners are technically breaking the law and risk legal sanctions by the state.** All ACHC practitioners except those already licensed by the state of Montana are practicing medicine without a license. Many are also in technical violation of other licensed professions' practice acts because many unlicensed health care practices overlap with professions licensed by the state. **As a result, some licensed professions are prohibiting unlicensed practitioners from practicing the skills they've been trained to perform as part of their practice.**
2. **The right of the consumer to seek out the health care of their choice is limited** because the unlicensed practitioner goes "underground" and is not as available or quits practicing altogether. Health Freedom legislation addresses these problems by protecting the right of practitioner to practice provided they follow some simple rules that protect the consumer from harm.

## Why not license these practices?

States license professionals in order to protect the public from harm, yet many ACHC and other unlicensed practices do not meet that threshold of harm. Those that do are already licensed in Montana. **There is no need to license a profession when there is no or low risk of harm to the public.** It is expensive, drives up the cost to the consumer and creates additional unnecessary bureaucracy. It is however, important for the unlicensed practitioner to be able to provide the services that they've been trained to perform. While many professions turn to licensure to protect their right to practice (in the name of public protection), it is not the true purpose of licensure. Health Freedom is a different approach that balances the right of the practitioner to practice without fear of prosecution AND most importantly, protects the consumer.

## How does a Health Freedom Law Work?

The presumption is that many ACHC professions present minimal risk of harm and that licensure is not necessary. To ensure that the threshold of harm is not violated, a list of acts is included that the practitioner cannot perform. They are breaking the law if they perform them. In addition to the prohibited acts, the practitioner is required to provide a written disclosure that the client signs and the practitioner keeps on file.

## How does this protect the public?

The public is protected in 5 ways:

1. **An informed consumer is a protected consumer.** By signing a disclosure, the consumer acknowledges that they've gotten a copy of the practitioner's training and credentials and that the person is not licensed by the state. Right now, consumers don't necessarily know what the practitioner's training is and assume they're all licensed. Practitioners at this time are not compelled to provide this information. Requiring this information provides a layer of protection that is not currently in the law. As we all know, training does not guarantee competency, but the consumer now has the information to make decisions concerning the type and training of the practitioner that they choose to see.
2. **It protects the consumer's access to ACHC** and other health care professionals by ensuring that they can seek out the practice of their choice and not have their choices limited because a licensed occupation doesn't think that unlicensed practitioners should be able to do some of the things that they do.
3. **It does NOT take away the consumer's legal right to sue anyone for malpractice or negligent behavior.**
4. **It does NOT take away the occupational boards' right to go after someone who is practicing negligently.**
5. **It does NOT take away the occupational boards' right to regulate their own licensees.**

## Is this type of law new?

**Health Freedom in some form has been enacted in six states:** Minnesota, California, Idaho, Rhode Island, Louisiana, and Oklahoma. Many more are introducing legislation that is very similar to the bill we are proposing.

### **Are we making new law?**

**This type of law**, at least as far as prosecution for practicing medicine, **has a long basis in constitutional law**. Many court cases throughout the country have been decided in the practitioner's favor when the practitioner has been able to show that they haven't caused harm, aren't doing harmful acts, and the training, background and credentials of the practitioner has been disclosed in writing to the consumer. A Health Freedom bill codifies it into law, rather than having it tried over and over again in the court system. What the national movement is about now (and so is the bill we propose), is expanding this law to apply to other occupations, not just the practice of medicine. This is due to the fact that many modalities/acts that unlicensed practitioners have been trained to perform as part of their profession overlaps with licensed professions.

### **How does this affect licensed professions?**

Most importantly this bill does NOT take away the occupational boards' right to go after someone who is practicing negligently, nor does it take away the occupational boards' right to regulate their own licensees.

Health Freedom changes how occupational boards sanction non-licensed practitioners. Currently boards can go after anyone who is infringing upon their scope. Unfortunately, ACHC infringes on just about everyone's scope. So, a board can sanction a practitioner just for merely using a word, or performing an act that they've been trained to do, regardless of whether or not the public has been harmed. This has happened in the state of Montana.

Health Freedom legislation requires the board to ask different questions. Current law only requires the question: is the person doing what I do? This has been enough to sanction the offending practitioner, despite their training and competency. The proposed legislation now shifts the questions to those of harm and competency: is what the person doing creating harm or a risk of harm? If someone does an act that they are not trained to do, then there IS a presumption of harm and the occupational board is well within its rights to sanction the ACHC practitioner regardless of whether harm has occurred. If the person is not performing the prohibited acts and their clients have not been harmed, or are under the risk of harm (meaning the person is trained in it and disclosed that training on the disclosure form), then the answer is "no" and the practitioner is not prosecuted. This is a shift – there is no longer a presumption that it is harmful for someone other than a licensed person to do a particular act.

### **Acts that constitute harm**

The legislation includes a list of prohibited acts, or acts that constitute when harm has occurred.

The list includes what the courts have held to be the acts commonly thought to cause harm under a medical practice act: performing surgery or puncturing the skin (except for finger-pricking screening purposes); prescribing or administering x-rays; prescribing or administering legend drugs, using devices that require a prescription for use, or prescribing or administering controlled substances; or the practitioner misrepresenting him or herself as licensed by the state. Also included are performing adjustments using a high-velocity low-amplitude thrusting force and working under circumstances or conditions that cause or create an imminent or discernable risk of significant bodily harm, serious physical or mental illness, or death.

In general, the list needs to be broad enough to ensure that the public is protected, but not specific enough so as to restrict the practitioner from performing acts that they've been trained to do.

**We believe that the Consumer Health Freedom and Access Act provides a good and necessary balance between protecting the public from harm, yet preserving their right to access the health care of their choice. We hope that you will support this effort as well.**

**This effort is sponsored by the Montana Health Freedom Coalition.**

**For more information or to make a donation or to volunteer to help please contact Deborah Kimmet at [deb@debkimmet.com](mailto:deb@debkimmet.com) or at 406-251-9704 for further information.**

# **Conflicts in Montana Law: Analysis**

## **Where Do ACHC (Alternative and Complementary Health Care) practices conflict with conventional/allopathic practices? And other issues...**

Prepared by Deborah Kimmet, MHFC

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- Previous ACHC Freedom Legislation in Montana

### **Introduction:**

With the exclusion of Naturopathic Physicians, midwives and acupuncturists, ACHC practices are not licensed by the state of Montana. Many conventional practices are licensed. Since there is overlap among these practices, there is the potential that ACHC practices could be prohibited – or at the least individual practitioners ordered to cease and desist their practice because of this perceived overlap.

It is just not feasible or necessary for all of these ACHC practices to seek licensure. The regulatory climate is not conducive, nor do the majority of these practices when ethically performed endanger the consumer. The Pew Health Professions Commission<sup>1</sup> does a good job of pointing out the problems of the current regulatory climate. Some professions are granted broader scopes than others, which causes those with broad scopes to protect their scope of practice. Laws are written to define the differences between professions, thus creating conflict as each profession attempts to protect its territory and maintain those boundaries. This protectionism does nothing to protect the consumer, but instead restricts access to services, drives up costs, and stifles development of new professions.

From what we have seen in Montana, emerging professions or professions seeking to be licensed have little chance of entering the legislative arena and emerging unscathed with an intact scope of practice: the legislative process and legislators tend to side with the more established professions and their needs rather than look very carefully at the competencies of the profession seeking licensure, and acknowledging that professions' scopes can and do overlap. This is detrimental to the consumer, as they should have the right and opportunity to seek out the care of their choice.

States are beginning to see the value of Freedom of Access Laws because of the overlap of ACHC and Conventional Medicine. These Laws provide consumer protection by protecting their access to ACHC while providing safety and welfare provisions that were not previously there. Some states exempt ACHC from prosecution of the practice of medicine only (or propose to in states where Freedom Coalitions are attempting to pass these laws), while others exempt or propose to exempt ACHC from the practice of all health care professions.

This paper's scope is merely to point out the conflicts in Montana Law, which then should justify why ACHC practices should have the broader exclusion. This paper does not condone or justify that ALL ACHC practices should have a blanket exemption. It is important and necessary that the consumer be protected, and that issue is not in the scope of this paper.

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<sup>1</sup> *Reforming Health Care Workforce Regulation: Policy Considerations for the 21<sup>st</sup> Century* (Report of the Taskforce on Health Care Workforce Regulation of the Pew Health Professions Commission, 1995)  
<http://www.futurehealth.ucsf.edu/summaries/reforming.html>

# Montana Law & ACHC

## General Provisions: What are the penalties for practicing without a license?

### Programs with Boards: Penalties for Practice without a license

#### 37-1-317. Practice without license

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

**Violation of injunction -- penalty.** A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

### Programs with NO Board: Penalties for Practice without a license

**37-1-411. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The department may investigate a complaint or other information received concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part.

**37-1-412. Violation of injunction -- penalty.** (1) A person who has been enjoined and who violates an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

## ANALYSIS BY PROFESSION: IS THERE A CONFLICT?

### MEDICINE: YES THERE IS A PROBLEM:

The issue here is treatment or correction of conditions, ailments, injuries or infirmities by any means. This is very broad and includes everything that ACHC practitioners do.

ACHC practitioners ARE practicing medicine without a license, and there is no exemption pertaining to ACHC care or non-licensed professionals except Christian Scientist.

#### 37-3-102. Definitions

(8) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter.

**37-3-301. License required -- kinds of licenses.** (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

**37-3-325. Violations -- penalties.** (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation (except a professional service corporation under Title 35, chapter 4)

practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than \$250 or more than \$1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

## **DENTISTRY: YES, THERE IS A PROBLEM**

The issue here is treatment of pain, deficiency, injury or physical condition of the teeth, jaws or adjacent structures. "Adjacent structures" is not defined. Does this include the musculature? If so, massage therapists are affected. Herbalists may work with a nutritional deficiency, craniosacral therapists may "unwind" the teeth by placing a finger on a tooth, or work with the cranial bones. Voice or music therapists may help the person "unlock" the holding pattern in their jaw through the use of music, toning or voice. A dance therapist may do the same by getting the person to move their body. These are just a few of the examples of how this scope limits ACHC. There are no exemptions relating to ACHC.

### **37-4-101. Definitions -- practice of dentistry**

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

**37-4-327. Practicing dentistry without license -- penalty.** (1) Except as provided in 37-4-101 through 37-4-104 and this section, a person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a license to practice dentistry from the department entitling the person to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

## **PODIATRY: YES, THERE IS A PROBLEM**

The issue here is treatment by all systems and means, while specifically talking about all structures of the foot and ankle. This scope limits bodyworkers, massage therapists, dance therapists, movement therapists, just to name a few. There are no exemptions relating to ACHC.

### **37-6-101. Definitions**

"Podiatry" means the diagnosis and treatment of ailments of the human functional foot and ankle as provided in 37-6-102.

**37-6-102. Scope of practice.** (1) A podiatrist may diagnose and treat ailments of the human functional foot and ankle by all systems and means. The functional foot is the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure that is directly attached to the anatomical foot and that impacts on or affects the foot or foot function. The ankle is the articulation between the talus, tibia, and fibula and their related soft tissue structures.

**37-6-104. Construction of chapter.** Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers

**37-6-301. License required for practice** It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a podiatrist, or in a sign or advertisement to use the word "podiatrist" or "foot correctionist" or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter.

**37-6-312. Penalty.** Any person who shall knowingly violate any of the provisions of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than \$250 or more than \$1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both fined and imprisoned.

## **PHARMACY: YES THERE IS A PROBLEM**

It may be a little unclear what a drug is, because what is considered "any official compendium or supplement?" This could affect herbologists, and anyone using over the counter preparations. While certain stores are exempt and can sell them, practitioners would not be exempt from selling or using (dispensing) them. Also, anyone using or dispensing or selling hand held tools or other devices that mitigates, treats or prevents disease is also in violation. Disease is not defined here.

### **37-7-101. Definitions.**

(10) "Device" has the same meaning as defined in 37-2-101.

37-2-101(2) "Device" means any instrument, apparatus, or contrivance intended:

- (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;
- (b) to affect the structure or any function of the body of humans.

(13) "Drug" means a substance:

- (a) recognized as a drug in any official compendium or supplement;
- (b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- (c) other than food, intended to affect the structure or function of the body of humans or animals; and
- (d) intended for use as a component of a substance specified in subsection (13)(a), (13)(b), or (13)(c).

(26) "Practice of pharmacy" means:

- (a) interpreting, evaluating, and implementing prescriber orders;
- (b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;
- (c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;
- (d) monitoring drug therapy and use;
- (e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;
- (f) participating in quality assurance and performance improvement activities;
- (g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and
- (h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

**37-7-103. (Temporary) Exemptions.** Subject only to 37-7-401 and 37-7-402, this chapter does not:

(5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

**37-7-301. Unlawful practice.** Except as provided in 37-7-307 through 37-7-309, it is unlawful for a person to:

- (1) engage in the practice of pharmacy unless licensed by the board; or
- (2) assist in the practice of pharmacy unless registered by the board as a pharmacy technician.

## **NURSING: No, it appears that there is no conflict with ACHC practices.**

ACHC practices do not appear to be in violation of the scope of practice for nursing. Nursing definitions are tightly written so as to apply to "nursing procedures" and "nursing theory."

### **37-8-102. Definitions.**

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

## **OPTOMETRY: YES, THERE IS A PROBLEM**

The issue here is visual training as well as "relief" of visual anomalies. Vision may change through neuromuscular treatment of the eye musculature, or even by correcting posture. Practitioners have instructed clients on the use of the exercises included in the Bates Method for better eyesight. There are many places where there is overlap by ACHC practitioners. There are no exemptions relating to ACHC.

**37-10-101. Definitions -- practice of optometry.** (1) The practice of optometry is the profession constituting the art and science of visual care and includes any one of the following acts:

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies;

**37-10-301. License required for practice -- unlawful acts -- injunction**

(1) A person may not:

(a) practice optometry in this state unless that person has first obtained a license;

**37-10-313. Penalty for violations -- deposit of fines.** A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than \$200 and not more than \$500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned.

## **PHYSICAL THERAPY: YES, THERE IS A PROBLEM**

The definition of PT is very broad and includes all (or almost all) ACHC practices. It is so broad that it could describe many conventional practices as well. There is also a conflict in the way the law is written that makes it unclear as to how it could affect ACHC practices: on one hand it says that no business or profession should be limited (37-11-101) but the law then goes on to say that a license is required to practice (37-11-301). It is ambiguous at best. The terminology in the law has the potential to restrict Massage Therapists. While MTs may perform "only to the extent they do massage" massage has not been defined. However, any standard dictionary defines it as "to rub" in various permutations. Therefore, an issue could be made that any massage therapist exceeding hands-on rubbing is in violation of this law.

**37-11-101. Definitions**

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

**37-11-102. Exemptions.** This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession, including osteopathy, chiropractic, chiropractic physiotherapy, or massage therapists, to the extent they do massage.

**37-11-104. Physical therapy -- evaluation and treatment.** (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound

**37-11-301. License required for physical therapist and assistant -- unauthorized representation as licensed therapist.**

(1) A person may not practice or purport to practice physical therapy without first obtaining a license under the provisions of this chapter.

**37-11-322. Penalties.** Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 or more than \$500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

## **CHIROPRACTIC: YES, THERE IS A PROBLEM**

While we agree that low-amplitude high-velocity thrusting forces of the joint intrudes on the scope of chiropractic and should not be performed by ACHC practitioners, the definition of chiropractic is too broad and includes ACHC practitioners. Adjustment and manipulation are not defined. "Manipulation of the... tissues of the body" includes the scope of massage therapy and bodywork, for example. If the ACHC practitioner picks up and moves an arm or rotates a finger, that is manipulation of the articulations. There are no exemptions for ACHC practices.

**37-12-101. Definitions -- practice of chiropractic.**

(3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.



**37-12-301. Unlawful to practice without license.** It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

**37-12-324. Penalty for violation.**

a fine of not less than \$100 or more than \$700 or by imprisonment in a county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

**ACUPUNCTURE: We do Not think there is a problem, but there are conflicting statements**

The scope of practice overlaps with ACHC (acupressure and remedies and herbs) and states that a license is required to practice, thereby prohibiting these practices by ACHC practitioners. However, the law goes on to state that it does not affect the occupation by an individual who does not represent they are an acupuncturist. These statements conflict since a license is required to practice.

**37-13-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Acupuncture" means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. The term includes the use of acupressure and the use of oriental food remedies and herbs.

**37-13-104. Partial exemptions.** (3) This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter.

**37-13-301. License required for practice.** (1) A person may not engage in the practice of acupuncture in this state unless the person is licensed under the provisions of this chapter.

**37-13-315. Enjoining unlawful practice.** The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

**37-13-316. Penalty.** A person who violates any of the provisions of this chapter or the rules of the Montana state board of medical examiners is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding \$500, or both

**SPEECH-LANGUAGE PATHOLOGY: MAY BE A PROBLEM**

May possibly be a problem for music and voice therapists and coaches, if they use the language "voice therapist" or "voice therapy." Otherwise, it is written very specific to speech-language pathology, and may not pose a problem.

**37-15-102. Definitions.**

(7) "Practice of speech-language pathology" means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule. – board rule does not appear to be clear

(8) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

**37-15-103. Exemptions – No exemptions for ACHC**

**37-15-301. License required**

(2) No person may practice or represent himself as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter

**37-15-322. Penalty.** A person convicted of violating this chapter shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

**PSYCHOLOGISTS: YES, THERE IS A PROBLEM**

The language is a bit unclear: To step on the toes of the practice, one must do an action (engage in the practice) AND use the words "psychological" or "psychology." But, then below, it says the person cannot "engage in the practice" if they are not licensed. This could be problematic for people doing biofeedback, hypnotherapy. Of note is "the psychological aspects of physical illness, accident, injury..." (secondary to that are "treatment of mental and emotional disorders and disabilities" issues) Just about any practitioner works with the mental and emotional well-being of their clients, so this language is a problem.

### **37-17-102. Definitions.**

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (4) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee.

**37-17-104. Exemptions.** This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic";

**37-17-301. License required.** A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this chapter.

**37-17-313. Injunction for unlawful practice.** The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

## **VETERINARY MEDICINE: YES, THERE IS A PROBLEM**

Any person who "administers a... treatment of whatever nature... for the prevention, cure or relief of a pain... bodily injury... physical condition" is practicing veterinary medicine. You cannot work on animals at all – unless you are employed by the veterinarian.

In fact, an equine massage instructor was ordered to remove the words "health" from her teaching brochures.

**37-18-102. Veterinary medicine defined.** (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

**37-18-104. Exemptions -- rules.** (1) This chapter does not apply to:

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

**37-18-301. License required.** A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

## **PHYSICIAN ASSISTANTS: APPEARS TO BE OK**

The only way a person could be prosecuted under this is if they are licensed.

There is nothing in the statute about the unlawfulness of "representing" oneself as a PA.

### **37-20-401. Definitions.**

(3) "Physician assistant" means a member of a health care team, licensed by the board, who provides medical services that may include but are not limited to examination, diagnosis, prescription of medications, and treatment under the supervision of a physician licensed by the board.

**37-20-411. Unlawful acts.** A person who performs acts constituting the practice of medicine in this state acts unlawfully if the person:

(1) has not been issued a license pursuant to this chapter and is not exempt from the licensing requirement of this chapter; or

(2) has received a license pursuant to this chapter but has not completed a duties and delegation agreement or a supervision agreement.

## DIETICIAN: APPEARS TO BE OK

This law is a title protection act – not a licensure. There is no license required to practice. No practice is defined, or acts defined as to what a dietitian is. Therefore, as long as the person does not represent that they are a dietitian or call themselves one, they are ok.

**37-21-301. Dietitian -- qualifications.** No person may use, in connection with his name or place of business, the term "dietitian" or represent in any way that he is a dietitian unless he:

- (1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or
- (2) (a) is 18 years of age or older;
- (b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;
- (c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and
- (d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by **37-21-302. Registered dietitian -- qualifications.** A person may not use, in connection with the person's name or place of business, the term "registered dietitian" or represent in any way that the person is a registered dietitian unless the person:

- (1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or
- (2) (a) has fulfilled all the requirements set forth in 37-21-301(2);
- (b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and
- (c) except as provided in 37-1-138, has satisfactorily completed the continuing education requirements as may be established by an authorized agency. no license required to practice – just title protection

## SOCIAL WORK: APPEARS TO BE OK

While the definition is problematic, this is of no concern. This Law is a title protection act, meaning that a license is not required as long as the person does not represent themselves to be a licensed social worker.

**37-22-102. Definitions.** As used in this chapter

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

- (a) counseling and using psychotherapy with individuals, families, or groups;
- (b) providing information and referral services;
- (c) providing, arranging, or supervising the provision of social services;
- (d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;
- (e) helping communities to organize to provide or improve social and health services; and
- (f) research or teaching related to social work.

**37-22-305. Representation to public as licensed clinical social worker -- limitations on use of title -- limitations on practice.** (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical social worker". Except as provided in subsection (2), a person may not represent that the person is a licensed clinical social worker by adding the letters "LSW" or "LCSW" after the person's name or by any other means unless licensed under this chapter.

**(3) Subsection (1) does not prohibit:**

(a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social worker" or "licensed clinical social worker";

**37-22-411. Violations -- penalties.** (1) It is a misdemeanor for a person to:

- (a) represent himself as a licensed social worker without being licensed under this chapter;

## PROFESSIONAL COUNSELING: APPEARS TO BE OK

While the definition is problematic, this is of no concern. There is an exemption in 37-23-201(4) that protect ACHC providers.

**37-23-102. Definitions.** As used in this chapter, the following definitions apply: 3) "Professional counseling" means engaging in methods and techniques that include:

- (a) counseling, which means the therapeutic process of:
- (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or
- (ii) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(b) assessment, which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) counseling treatment intervention, which means those cognitive, affective, behavioral, and systemic counseling strategies, techniques, and methods common to the behavioral sciences that are specifically implemented in the context

of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development; and

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of the judgment, and communicating as requested or considered appropriate with the referral sources.

**37-23-201. Representation or practice as licensed clinical professional counselor -- license required.**

(2) ...or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

**(4) Subsection (2) does not prohibit:**

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or addiction counselor licensed pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

## **OCCUPATIONAL THERAPY: May be OK, MAY BE A PROBLEM**

While the definition is problematic, this is of no concern, as there is an exemption that protects ACHC providers. HOWEVER, what may be problematic is that it says that a person may not "render occupational therapy services" unless they are licensed. This appears to be in conflict.

**37-24-103. Definitions.**

(5) "Occupational therapy" means the therapeutic use of purposeful goal-directed activities and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by disease or disorders, impairments, activity limitations, or participation restrictions that interfere with the individual's ability to function independently in daily life roles. The practice encompasses evaluation, assessment, treatment, consultation, remediation, and restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) evaluating, developing, improving, sustaining, or restoring skills in activities of daily living, work or productive activities, including instrumental activities of daily living, and play and leisure activities;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying orthotic or prosthetic devices, applying and training in the use of assistive technology, and training in the use of orthotic and prosthetic devices;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) adaptation of task, process, or the environment, as well as teaching of compensatory techniques, in order to enhance performance;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) application of physical agent modalities, as defined in this section, as an adjunct to or in preparation for engagement in purposeful goal-directed activity;

(l) promoting health and wellness;

(m) evaluating and providing intervention in collaboration with the client, family, caregiver, or others;

(n) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions;

(o) consulting with groups, programs, organizations, or communities to provide population-based services; and

(p) use of prescribed topical medications.

**37-24-104. Exemptions.** Nothing in this chapter prevents or restricts the practice, services, or activities of:

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent to the public that the person is an occupational therapist;

**37-24-301. License required.** (1) (a) No person may hold himself out as an occupational therapist or as being able to practice occupational therapy or able to render occupational therapy services in this state unless he is licensed as an occupational therapist under the provisions of this chapter.

## **NUTRITIONISTS: YES, THERE IS A PROBLEM (no one can give specific info)**

While there is no "license required to practice" statement or section, the statement in 37-25-301 that says that "only a nutritionist can..." essentially has the same effect.

The way this law is written is that no one can give "specific" information about food, nutrients or supplements – only "general" information. "General" is defined, but "specific" is not and could be problematic. A practitioner tailoring an herbal / supplement or other nutrient program to an individual is in violation of this law.

### **37-25-102. Definitions.**

(5) "General nutritional information" means information on:

- (a) principles of good nutrition;
- (b) foods to be included in a daily diet;
- (c) the essential nutrients needed by the body;
- (d) recommended amounts of these nutrients;
- (e) the action of these nutrients on the body;
- (f) the effects of deficiencies in these nutrients; or
- (g) foods and supplements that are good sources of essential nutrients.

(7) "Nutrition assessment" means the evaluation of nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data in order to determine nutrient needs and to recommend appropriate nutritional intake, including both enteral and parenteral nutrition.

(8) "Nutrition counseling" means providing assistance and advice to individuals or groups in the selection of food and other sources of nutrients to achieve appropriate nutritional intake, based on:

- (a) the nutrition assessment;
- (b) the composition of food and other sources of nutrients; and
- (c) meal preparation consistent with cultural background and socioeconomic status.

### **37-25-301. Scope of dietetic-nutrition practice. Only a nutritionist can provide the following services:**

- (1) assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting;
- (2) establishing priorities and objectives that meet nutritive needs and are consistent with available resources and constraints;
- (3) providing nutrition counseling for any individual;
- (4) developing, implementing, and managing nutrition care systems; and
- (5) evaluating, adjusting, and maintaining appropriate standards of quality in food and nutrition services.

### **37-25-304. Exemptions from licensure requirements.**

(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if he does not represent himself to the public as a nutritionist;

(7) a person from furnishing general nutrition information or disseminating literature if he does not represent himself to the public as a dietitian or a nutritionist; or

**37-25-305. Representation to public as nutritionist -- limitation on use of title.** A person may not represent to the public by any title, sign, or advertisement or description of services that the person is a nutritionist or a licensed nutritionist unless the person has been licensed under this chapter or has met the requirements of 37-25-102(9)(b).

## **NATUROPATHIC PHYSICIAN: May be OK, MAY BE A PROBLEM – VERY MURKY.**

May be a Problem in that a license is required to practice, and if there is overlap, how do you specify what others can't do? Yet at the same time, it says that other practices are not prohibited, and lists which general areas are not prohibited. We're not sure, but there may be someone not covered by this statement, who practices ACHC.

### **37-26-103. Definitions**

(7) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of natural therapies and therapeutic substances.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under this chapter.

**37-26-302. Exemptions.** (1) This chapter recognizes that many of the therapies used by naturopathic physicians, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic physicians, and their use, practice, prescription, or administration by persons not licensed to practice naturopathic medicine is not prohibited by this chapter.

(2) This chapter does not restrict or apply to the scope of practice of any other professions licensed, certified, or registered under the laws of this state.

**37-26-401. License required -- titles restricted -- enjoining unlawful practice.** (1) Except as provided in 37-26-302, a person may not practice naturopathy without a valid and current license issued by the board as provided in this chapter.

(3) A violation of this chapter may be enjoined by the district court on petition by the board.

### **DIRECT ENTRY MIDWIFE: YES, THERE IS A PROBLEM**

The definition is a problem with anyone working with a pregnant woman during pregnancy or postpartum. There are no exemptions that apply to other ACHC practices. Therefore, Doulas, Nannies, baby sitters, lactation specialists are all breaking this law. In addition, massage therapists and bodyworkers providing services during this time are also in violation.

**37-27-103. Definitions.** As used in this chapter, the following definitions apply:

(7) "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

**NO EXEMPTIONS APPLY TO US...**

**37-27-301. Unlawful to practice without license.** It is unlawful for a person to practice direct-entry midwifery in this state without first obtaining a license under this chapter.

### **RESPIRATORY CARE: May be a Problem**

The definition is a little murky – in saying that it is "care provided by a member of a profession..." – this could be enough so that it is not a problem. However, if it is interpreted to mean anyone doing any kind of respiratory care, certain procedures used by MTs/bodyworkers could be in question: cupping/percussion to clear the airways for example, lung compressions (NMT, NSI) to massage the lungs, and so on.

**37-28-102. Definitions.**

(3) (a) "Respiratory care" means the care provided by a member of the allied health profession responsible for the treatment, management, diagnostic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician;

(ii) transcription and implementation of the written or verbal orders of a physician regarding the practice of respiratory care;

(iii) observation and monitoring of a patient's signs and symptoms, general behavior, and physical response to respiratory care treatment and diagnostic testing, including determination of abnormal characteristics;

(iv) implementation of respiratory care protocols pursuant to a prescription by a physician; and

(v) initiation of emergency procedures prescribed by board rules.

(b) Respiratory care is not limited to a hospital setting but must be performed pursuant to a physician's order and under qualified medical direction. The term includes inhalation and respiratory therapy.

**37-28-201. License required -- exceptions -- respiratory care not the practice of medicine.** (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) This chapter may not be construed to permit the practice of medicine.

### **DENTURITY: APPEARS TO BE OK**

The definition is very specific and does not pertain to any ACHC practices that we know of.

**37-29-102. Definitions.** (6) "Practice of denturity" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

### **BARBERING, COSMETOLOGY, ELECTROLOGY, ESTHETICS, AND MANICURING: YES THERE IS A PROBLEM**

Anyone caring for (touching) the hands, lower arms, feet, and lower legs or giving facial or scalp massages, or applying oils, lotions, or gels to the scalp, face, hands, or neck is in

violation of this chapter unless they are "authorized under the laws of this state to practice" (meaning licensure, which most ACHC practices are not) or the services are administered in a theatrical situation if employed to do so. So, massage and bodywork practices are in violation (unsure if other ACHC practices are affected). Not only that, the establishment where these services are provided must also be licensed by the state. Therefore, offices of ACHC practitioners providing these services are operating illegally. And, it is illegal to do housecalls unless the person is sent from a licensed establishment or the client is homebound or disabled.

**37-31-101. Definitions.**

(4) (a) "Electrology" means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.

(b) Electrology does not include piletharmology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

(6) "Esthetics" means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

(8) "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

(a) shaving or trimming a beard;

(b) cutting, styling, coloring, or waving hair;

(c) straightening hair by the use of chemicals;

(d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;

(e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(9) (a) "Practice or teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

**37-31-102. Exemptions.** The provisions of this chapter do not prohibit:

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production, including television or motion pictures, by persons employed or under contract to provide these services.

**37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice barbering, cosmetology, electrology, esthetics, or manicuring for compensation;

(b) own, manage, operate, or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) manage or operate a salon or shop or a booth; or

(d) teach in a school of barbering, cosmetology, electrology, esthetics, or manicuring.

(2) It is unlawful:

(a) for a person who owns, manages, or controls a salon or shop to employ or use an unlicensed person as a barber, cosmetologist, electrologist, esthetician, or manicurist;

(b) to operate a school of barbering, cosmetology, electrology, esthetics, or manicuring without complying with all of the regulations of 37-31-311;

(c) to practice barbering, cosmetology, electrology, esthetics, or manicuring in any place other than in a licensed salon or shop as provided in this chapter, except when a licensee is requested:

(i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from a licensed salon or shop; or

(ii) by a customer with a disability or homebound customer to go to the customer's place of residence; or

(d) to violate any of the provisions of this chapter.

**37-31-302. License required to practice, teach, or operate salon or shop, booth, or school.** (1) A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license.

## CLINICAL LABORATORY SCIENCE – APPEARS TO BE OK

Definitions do not apply.

## ADDICTION COUNSELING – APPEARS TO BE OK

The definitions are narrowly written and the exemptions would cover ACHC practices.

**37-35-102. Definitions.**

(2) "Addiction" means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs. The term includes chemical dependency as defined in 53-24-103.

(4) "Licensed addiction counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction counseling and who is licensed under the provisions of this chapter.

**37-35-201. License required -- exceptions.** (1) Except as otherwise provided in this chapter, a person may not practice addiction counseling or represent to the public that the person is a licensed addiction counselor unless the person is licensed under the provisions of this chapter.

(2) This chapter does not prohibit an activity or service:

(a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a licensed addiction counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a licensed addiction counselor.

## **SANITARIANS – May be a problem**

The definition to practice the profession is a little unclear – the parts of the definition are all joined by "and" which could mean that all (a, b & c) have to occur before the person is practicing. However (c) is problematic if they are allowed to stand alone, as ACHC educators would need to be associated with a college or university.

**37-40-101. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(3) "Practice the profession of sanitarian" means:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

(4) "Registered sanitarian" means a sanitarian licensed under this chapter.

(5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of the person's special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, or enforcement duties, is qualified to practice the profession of sanitarian.

### **37-40-102. Exemptions. . DO NOT COVER ACHC PRACTITIONERS**

Persons exempt from the requirements of this chapter are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

**37-40-301. License required.** A person may not practice or offer to practice the profession of sanitarian as defined in this chapter or hold himself out in any manner to be a licensed sanitarian unless the person is licensed and registered under the provisions of this chapter.

## **OUTFITTERS AND GUIDES – May be a problem**

ACHC practitioners may not be allowed to run outdoor groups. The punctuation of the definition makes it unclear whether an outfitter simply provides equipment, or whether to be considered an outfitter, the purpose has to be for the "person to hunt, trap, capture..." In short, it may or may not be a problem.

### **37-47-101. Definitions**

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

**37-47-301. License required -- services performed -- standards.** (1) A person may not act as an outfitter, guide, or professional guide or advertise or otherwise represent to the public that the person is an outfitter, guide, or professional guide without first securing a license in accordance with the provisions of this part.

## **ATHLETIC TRAINERS – YES, THERE IS A PROBLEM**

According to the Definition, any ACHC practitioner working with athletes to prevent or work with injuries is in violation except for massage therapists when they provide massage **only**.

An ACHC practitioner may educate, but no more than that.

HOUSE BILL NO. 665

Section 2. Definitions.



(4) "Athletic training" means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The term includes the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, or mechanical devices related to the care and conditioning of athletes; and

(b) the education and counseling of the public on matters related to athletic training.

**Section 6. Representation to public -- practice -- exemptions.** (1) (a) Except as provided in subsection (2), an individual may not practice athletic training without a license.

(2) This section does not prohibit:

(b) an educator or an information specialist from providing general information regarding prevention of athletic injuries;

(f) a massage therapist from providing massage; or

#### **THE FOLLOWING PROFESSIONS DO NOT APPLY TO ACHC:**

PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS

PUBLIC ACCOUNTANTS

REAL ESTATE BROKERS AND SALESPERSONS

TIMESHARE SALES

REAL ESTATE APPRAISERS

PRIVATE INVESTIGATORS AND PATROL OFFICERS

ATTORNEYS AT LAW

ARCHITECTURE

LANDSCAPE ARCHITECTURE

ENGINEERS AND LAND SURVEYORS

ELECTRICIANS AND ELECTRICAL SAFETY

PLUMBERS

CONSTRUCTION BLASTING

ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS

ATHLETIC AGENTS

#### **Previous ACHC Freedom Legislation in Montana**

In 2007, an ACHC Freedom Bill (HB445) was introduced during the 2007 Legislative by Rep. Janna Taylor (R) Dayton (in the Flathead). The bill would have defined alternative medicine and would have exempted a practitioner from disciplinary action because of practicing alternative medicine. In other words, if a doctor offered alternative medicine, his own board could not discipline him/her for doing so.

On the surface, this sounds really good, but it wasn't for 2 reasons:

According to those testifying, the ACHCB thought that the definition of "Alternative Health Care" was poorly defined. Secondly, no professional board wants to lose control over their licensees. For these two reasons the bill died very quickly.

As far as ACHC practitioners go though, this bill did nothing to protect them – only those already considered mainstream... so this was not a true ACHC Freedom Bill. It would have only given access to mainstream medical practitioners to practice ACHC practices.

#### **Current (2009) ACHC Freedom Legislation**

Legislation has been drafted for the 2009 Legislative session. As drafted, it will address the issues included in this report:

1. It will add more protection of the public and protect their right to seek out the (non-harming) alternative health care of their choice.
2. It does not re-define "alternative health care."
3. It does not take power away from already existing boards to regulate their licensees.
4. It sets a new standard for practitioner prosecutions: the assumption that a trained practitioner is causing harm because they are not licensed is no longer valid, which reduces punitive prosecutions toward trained ACHC practitioners.

# REFORMING HEALTH CARE WORKFORCE REGULATION

## *Policy Considerations for the 21st Century*

Report of the Taskforce on Health Care Workforce Regulation

December 1995

Prepared by: Pew Health Professions Commission

Selected Passages from the report

Overview, Commentary, & Conclusion prepared by the Montana Health Freedom Coalition

### **Overview:**

The MHFC contends that licensure boards in some cases have properly carried out their duty in sanctioning unlicensed practitioners in order to protect the public and in other instances have abused their power to protect their scope and not the public.

Boards have sanctioned practitioners not because there is a danger to the public, but because they can: the practitioner has, while responsibly carrying out the competencies of their practice, have intruded into the broadly written definitions of professional scopes of practice.

Sanctioning these practitioners is detrimental to the public as it decreases competition, creates monopolies where access to an alternative method of care is not available, and increases costs.

Availability to the public of these unlicensed services is crucial, as it is imperative for public safety: more and more consumers are turning to alternative and complementary health care as it costs less than conventional care. It seems prudent to ensure that practitioners, working responsibly and within their knowledge base, are available to the public to help guide them through this maze of options safely.

The Pew Report focuses on reforming health care regulation. It clearly makes many of our points for us. Below are selected passages:

**Commentary: The passage below points out that licensure is more political than it is about competencies. Our experience has been that scopes are defined with the input of all the other professions, without a focus on competency domains. Thus, if a profession wants to be licensed, it more often than not must compromise its scope to become licensed. This is one reason many unlicensed practices do not want to enter into the legislative fray to obtain the legitimacy and protections afforded by licensure.**

"The lack of uniformity in language, laws, and regulations between the states limits effective professional practice and mobility, confuses the public, and presents barriers to integrated delivery systems and the use of telemedicine and other emerging health technologies. These difficulties transcend state boundaries and call for standardization across the individual states. As Safriet (1994) writes:

*Since health and illness are for the most part biologically and physically based, with some psychological and emotional components, it is not at all clear why licensure laws—that is, proxies for competency—should vary according to political boundaries rather than competency domains."*

— Introduction p. vi

**Commentary: The next passages point out the issues that exist when licensure is enacted. Our intention is not to indict the concept of licensure (many of us support licensing our professions), but to point out its problems: barriers to affordable and accessible care, restriction of practice among those who share overlapping competencies, economic struggles, questionable consumer protection, turf wars and power struggles. We believe these issues not only exist between licensed professions, but between those who are licensed and those who are not.**

"Current statutes grant broad, near-exclusive scopes of practice to a few professions and "carved-out" scopes for the remaining professions. These laws erect unreasonable barriers to high-quality and affordable care. The need for accessible health care calls for flexible scopes of practice that recognize the demonstrated competence of various practitioners to provide the same health services."

— Introduction p. vii

"Scopes of practice also draw the boundaries among the professions, creating exclusive domains of control over the delivery of specific services. Many professions argue that this exclusivity denies them the right to provide services they are competent to render (Safriet, 1994). The result has been a flood of "border wars" or "turf battles" between professions."

– Chapter 3 p. 9

"The varying objectives and levels of specificity found in different professions' scopes of practice are more than frustrating; they have encouraged a system that treats practice acts as rewards for the professions rather than as rational mechanisms for cost-effective, high quality and accessible service delivery by competent practitioners. Although couched in consumer protection language, scopes of practice are not always based on the demonstrated ability to provide services that are potentially harmful if not performed competently. Rather, they are written to define differences among professions. Scope of practice battles have come to resemble contests for more patients, more status and power, more independence, and more money."

– Chapter 3 p. 10

**Commentary: The next passage makes the case for health freedom. Licensure at its worse penalizes other professionals who are working within their competency and harms emerging professions.**

"The inflexibility disregards the competence of other professions to provide the same or similar services safely (Office of Technology Assessment, 1986; Begun and Lippincott, 1993). It extends to individual careers when health professionals are barred from developing skills they could incorporate competently into their practices. Further, when licensure and scopes of practice are considered desirable and legitimizing — but ultimately difficult to achieve — the development of new professions is stymied."

– Chapter 3 p. 10

**Commentary: The following passages point out the consumer and cost issues resulting from an inflexible system, including those cost associated with professions protecting their turf.**

"Beyond this inflexibility, the inefficiencies of our regulatory system result in increased costs. Economists view licensure laws as state-enforced service monopolies that decrease competition, increase costs, and decrease access for the consumer, with the most restrictive licensure statutes contributing the most economic harm to the consumer (Hall, 1993). Health care delivery organizations have recognized that increased costs can be attributed in part to the limited number of professions who can competently provide the same care less expensively (Nichols, 1992)."

– Chapter 3 p. 11

"The cost of services is also increased by professional turf battles. As is evident today in professional journals, at professional meetings, and in state legislative offices across the country, many professions are investing significant amounts of time and money to garner legislative support for new or broader scopes of practice. The professions with established scopes of practice are spending comparable, if not more, resources defending their scopes from threats of invasion."

– Chapter 3 p. 11

**Commentary: The last passage points out what an ideal system would look like.**

Professionals should be allowed and encouraged to provide services to the full extent of their current training, experience and skills. A regulatory system that maintains its priority of quality care, while eliminating irrational monopolies and restrictive scopes of practice would not only allow practitioners to offer the health services they are competent to deliver, but would be more flexible, efficient, and effective.

– Chapter 3 p. 13

## **Conclusion:**

**The Montana Health Freedom Coalition believes that a new way of looking at the regulation of professions is needed that addresses these issues raised in the report. We contend that licensure is not the only method of regulation that protects the public, and the report's passages above point out that licensure isn't always about public protection. In our view, ideal regulation would include a method that provides consumer access to a variety of low or no risk health care options, care that lowers consumer costs, and in a responsible way that protects the public. The Montana Consumer Health Freedom and Access Act is such a regulatory option.**

# Professions that could be affected by a Freedom of Access Law

acupressure  
anthroposophy  
aroma therapy  
Asian bodywork therapies  
ayurveda  
biofield therapy  
bodywork  
colostrum therapy  
cranial sacral therapy  
crystal therapy  
creative arts therapies  
culturally traditional healing  
practices  
detoxification practices and  
therapies  
energetic healing  
flower essences  
folk practices  
gerson therapy  
healing touch

herbology or herbalism  
homeopathy  
therapeutic massage  
meditation  
mind-body healing practices  
nondiagnostic iridology  
noninvasive instrumentalities  
polarity therapy  
reflexology or zone therapy  
therapeutic touch  
traditional Tibetan practices  
individual biological therapies use of the  
physical forces of heat, cold, water, touch,  
and light  
healing practices that use food, food  
supplements and nutrients  
somatic practices including movement  
therapies and educationally-based healing  
practices.

or any combination of such practices

According to the Texas Health Freedom Coalition, the above categories of practices represent at least 1200 distinct professions.

In addition there are many other professions affected in the health and fitness fields such as yoga, personal training and fitness training.

To: Montana Senate Committee on Business, Labor, and Economic Affairs  
Subject: SUPPORT SB 287, Consumer health freedom and access act  
Date: 2009 February 06

Please support the "Consumer health freedom and access act" (Montana Bill #LC0654, SB287). Here's why I feel it is needed in Montana:

### **Background — Prosecution for practicing medicine without a license**

In many states, unlicensed health practitioners (herbalists, massage therapists, health educators, etc.) have been targeted with legal harassment by medical boards and other licensed professional associations, even though there is a long history of judicial case law (common law) that has established the right of these practitioners to offer their services and the right of the public to seek them out, as long as these practitioners do not attempt to deceive the public by behavior or language that implies they are licensed medical/health practitioners when they are not.

Advocates for health freedom believe that if an individual wishes to obtain the services of an unlicensed health practitioner, that that individual should have the right to do so, and that an unlicensed health practitioner should have the right to offer his or her services without harassment by or permission from government, as long as there is honest disclosure and no fraud or deception involved.

The following article reveals how prosecutions are frequently based on issues of word-play and debates over professional "ownership" of such words as "medicine" and "diagnose" and the terminology of medical physiology and anatomy.

- <http://www.rmhiherbal.org/a/f.ahr3.rights.html>  
"The right to practice herbology, legal history and basis";  
by Roger Wicke, Ph.D.; Rocky Mountain Herbal Institute, 1995.

Many health practitioners remain unaware of how use of these words can be used in certain contexts as prima facie evidence that the practitioner is practicing medicine, even in cases where most ordinary people would understand that the practitioner is not a doctor and has made no attempt to deceive people into thinking he or she is a doctor, but is merely attempting to educate.

(I wrote the preceding article over 10 years ago after witnessing herbalist colleagues of mine being prosecuted for practicing medicine without a license. After hearing conflicting opinions about what "practicing medicine" legally entailed, I decided to spend several hundred hours of my own time to research the U.S. case law on this issue. The resulting article has been on our website for 10 years and has been confirmed by legal professionals and others with knowledge of how the system works.)

Montana SB 287 would protect unlicensed health care practitioners from legal harassment as long as they accurately inform their clients of their education and qualifications (and do not engage in specifically prohibited acts like surgery or penetration of the skin), so that individuals seeking such services can decide for themselves if the practitioner's qualifications will likely meet their needs.

### **Health profession licensing — the promise vs. the reality**

I highly recommend reading the following article by a fellow herbalist, which explains why

licensing often does not live up to its promise of protecting the public health, safety, and welfare:

- <http://content.herbalgram.org/iherb/herbalgram/articleview.asp?a=2524>  
"Some Arguments against the Standardization of Herbalists"  
by Stephen Buhner. In: *Journal of the American Botanical Council*; Issue 58, pp.54-58.

In summary, Buhner outlines the following negative effects of professional licensing:

- often increases costs to the public;
- creates de facto professional monopolies;
- inhibits competition;
- distorts goals of professional education by shifting focus away from improving clinical competence to elevating the profession's academic and economic status;
- often results in no discernible improvement in clinical outcomes, and in some cases, actually diminishes quality of clinical outcomes by inhibiting creative solutions and innovations.

Having provided education to herbalists and other health professionals for many decades, I can attest to Buhner's conclusions in the realm of herbal practice. The competence of practitioners who have taken my courses has had little correlation to whether they are licensed or not. I have had dedicated and competent unlicensed herbalists and medical doctors complete my courses; on the other hand, many licensed practitioners are looking for options to complete CEU (continuing education) requirements with the least amount of effort, and I discourage these people from starting my courses, because I believe in doing something well or not at all. Other authors and independent reports have questioned whether conventional CEU requirements promote increased competence. Too many licensed practitioners approach continuing education with a sense of entitlement — the notion that their license entitles them to get by with a minimal effort, in contrast to unlicensed practitioners who know that the primary determinant of their success is client satisfaction and clinical results.

### **Safety concerns — herbs vs. pharmaceutical drugs**

Regarding the safety of herbs, one need only examine the statistics. Properly prescribed pharmaceutical drugs cause are the fourth leading cause of death in the U.S. — 106,000 deaths/year (ref: *Journal of the American Medical Association*, July 2000). Properly administered herbs cause an average of one death per year in the U.S. According to Buhner, "Other herbal deaths, estimated to be approximately 50 per year, are mostly attributed to the improper use of ephedra (*Ephedra sinica* Stapf., Ephedraceae) as a weight-loss aid or energy booster. (The popular use of ephedra for weight loss and energy is a separate issue and one that should be dealt with through other, existing product-regulatory channels. It is unrelated to the regulation of herbal practitioners.)" I would add that the vast majority of cases of ephedra abuse are self-inflicted, without or in spite of advice from herbalists, who, in my experience, are uniformly aware of the problems irresponsible ephedra marketing has caused. Additionally, to place this all in perspective, USDA pharmacologist-herbalist Jim Duke points out that alcohol (ethanol) kills about 500,000 people each year, yet we allow people to "self-medicate" with alcohol at their own discretion.

### **What SB 287 does and does not do**

I have examined the current wording of the bill in detail, and I believe it is a good bill for several reasons:

1. In reality, it does not really create new law, but does create a clearly worded standard for Montana that restates what is actually already judicial case law common to many

states of the U.S. (Because of this, I am puzzled why many of the licensed professions have opposed this bill; do they wish to overturn over 150 years of U.S. judicial case law that has cautiously and incrementally established guidelines of fairness regarding this issue? Or do they merely wish to keep this information secret, so that innocent practitioners will remain ignorant of the proper procedures for protecting their rights?)

2. It creates no new administrative bureaucracy, but merely places unlicensed health practitioners, state health profession boards, and the courts on notice of their rights, duties, powers, and limitations. (So that unlicensed health care practitioners will no longer need to do hundreds of hours of legal research simply to learn how to defend their rights, which various U.S. state courts have already delineated.)
3. It is quite possible that this bill will actually reduce administrative costs by eliminating the legal gray zones that have been used to create fear and confusion, tie up the courts with nuisance cases, and in many cases have been used to destroy the livelihood of honest health practitioners.
4. It protects the right of the public to access many natural/alternative forms of health care and to decide for themselves whether a practitioner's qualifications meet their personal standards.

### For more information

Current wording and status of the bill can be tracked here:

- [http://laws.leg.mt.gov/laws09/law0203w\\$.startup](http://laws.leg.mt.gov/laws09/law0203w$.startup)

Enter SB 287 in the form at top of page.

For more information, please contact Deborah Kimmet, who has been the primary organizer behind the early drafting of this bill:

Deborah Kimmet  
deb@debkimmet.com  
406-251-9704

I encourage you to support this bill (#LC0654, SB 287).

Sincerely,  
Roger W. Wicke, Ph.D., Director  
Rocky Mountain Herbal Institute  
c/o PO Box 579  
Hot Springs, Montana  
Phone: 406-741-3811

# **Inconsistencies and Gray Areas in Montana Law:**

Prepared by Montana Health Freedom Coalition

There are several places in Montana law where the statutes appear to protect health freedom by using some kind of language that says that the law is not meant to limit or regulate any other business or profession. However, most of those statements are then later followed by others that assert that a license is required to practice.

If the person does not defend themselves by saying they are practicing x profession and not the practice they are accused of violating, then the language requiring a license to practice can be used against them.

One profession has gotten around the health freedom language in their own statutes by referring their cases on to the Board of Medical Examiners when protected terminology has not been used (naturopaths).

**The lack of consistency in language creates a gray area in the law: there is no standardization or uniformity in how the laws sanctioning unlicensed practice are administered. Where health freedom language is present, it echoes the intention of the courts: that a person is free to practice their own profession as long as they do not represent they are practicing another. Where it is not present, no such courtesy exists, and these boards are free to sanction persons working within the competencies of their own professions – even when no harm or risk of harm is evident.**

**Health Freedom Legislation would help the boards standardize the process for sanctioning practitioners and eliminate the gray areas in the law.**

Below are statutes that contain "health freedom" language:

**Physical Therapy:** "This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession" (37-11-102). **Note: It does not say authorized or licensed when describing the kind of business.**

**Acupuncture:** "This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter" (37-13-104) **Note: It does not say authorized or licensed when describing the kind of occupation.**

**Occupational Therapy:** "nothing in this chapter prevents or restricts the practice, services or activities of: (2) a person who... engages in other activities described in (the definition) but does not represent to the public that the person is an occupational therapist (37-24-104).

**Naturopathic Physician:** "This chapter recognizes that many of the therapies used by naturopathic physicians, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic physicians, and their use, practice, prescription, or administration by persons not licensed to practice naturopathic medicine is not prohibited by this chapter (37-26-302). **Note: It does not say that any person not licensed is prohibited from doing these acts – just persons not licensed to practice naturopathic medicine.**



**Professional Counseling:** the bill does not prohibit anyone "in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics from performing the duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaged in the practice of professional counseling." (37-23-201)

**Addiction Counseling:** "If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or a service of the profession as long as the person does not represent by title that the person is a licensed addiction counselor." (37-35-201)

**Dietician and Social Work:** These two professions deal with health freedom in a slightly different way: they are title protection acts. No person may use the protected titles of the profession and no license is required to practice unless you represent to the public that you belong to that profession.